

*These notes refer to the UK Borders Act 2007 (c.30)
which received Royal Assent on 30th October 2007*

UK BORDERS ACT 2007

EXPLANATORY NOTES

ANNEX A: EXISTING LEGAL FRAMEWORK

LIABILITY TO DEPORTATION

Under the current legislative framework, a non-British citizen can be deported in accordance with section 3 of the Immigration Act 1971. Section 3(5)(a) provides that such a person is liable for deportation if the Secretary of State deems his deportation to be conducive to the public good. Section 3(5)(b) provides that a non-British citizen is liable to deportation if another person to whose family he belongs is or has been ordered to be deported. Section 3(6) provides that a non-British citizen is liable to deportation if he has reached the age of seventeen, is convicted of an offence which is punishable by imprisonment and is recommended for deportation by a court. Exemptions exist for Irish and commonwealth citizens and diplomatic and international functionaries under sections 7 and 8 of the 1971 Act.

DETENTION

Schedule 3 para 2 provides the consequent power of detention:

- where the court has made a recommendation;
- where a notice of decision to make a deportation order has been served and;
- where a deportation order has been made.

APPEALS

Section 82(2)(j) of the Nationality, Immigration and Asylum Act 2002 defines a decision to make a deportation order as an immigration decision, which attracts a statutory right of appeal to the Asylum and Immigration Tribunal on grounds listed in section 84(1) of the 2002 Act. Under section 92(2) the appeal is exercisable from within the UK. Section 79(2) forbids the making of a deportation order whilst such an appeal is outstanding. Under sections 96 and 97 of the 2002 Act, the Secretary of State or an immigration officer can certify the immigration decision such that no appeal can be brought. S96 applies where the person should have raised the point in an appeal against an earlier immigration decision or in response to a one-stop notice. S97 relates to national security cases and directs appeal to Special Immigration Appeals Commission (SIAC). Refusal to revoke a Deportation Order is an immigration decision attracting an out of country right of appeal under s82(2)(k) of the 2002 Act.

EEA NATIONALS

EEA nationals are considered for deportation in accordance with the Immigration (European Economic Area) Regulations 2006.